



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

NOV 29 2004

Via Certified Mail, Return Receipt Requested

Earl Allen Haywood

Washington, DC 20003

RE: MUR 5610

Dear Mr. Haywood:

On November 9, 2004, the Federal Election Commission found that there is reason to believe that you, in your official capacity as treasurer and in your personal capacity, knowingly and willfully violated 2 U.S.C. §§ 432(b)(3), (c)(5), (h)(1), 434(b)(4)(H)(v), (6)(B)(v) and 439a(b), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

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Earl Allen Haywood

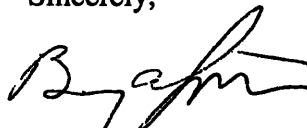
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If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Alexandra Doumas, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith
Chairman

Enclosures

Factual and Legal Analysis

Procedures

Designation of Counsel Form

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2 **FEDERAL ELECTION COMMISSION**

3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENT:** Earl Allen Haywood, in his official MUR: 5610
6 and personal capacities
7
8

9 **I. GENERATION OF THE MATTER**

10 This matter was generated based on information ascertained by the Federal Election
11 Commission ("the Commission") in the normal course of carrying out its supervisory
12 responsibilities. See 2 U.S.C. § 437g(a)(2).
13

14 **II. BACKGROUND**

15 While serving as Assistant Treasurer of the Dole North Carolina Victory Committee, Inc.
16 ("Victory Committee") and North Carolina's Salute to George W. Bush Committee, Inc. ("Salute
17 Committee") between February 2002 and May 2003, Earl Allen Haywood ("Haywood") wrote
18 checks totaling approximately \$174,725 from Committee accounts, designating himself as payee.
19 Neither Haywood nor the Committees kept track of the disbursements nor reported any of them
20 to the Commission. Haywood agreed to plead guilty to one count of mail fraud as a result of this
21 activity. This activity also resulted in separate and distinct violations of the Federal Election
22 Campaign Act of 1971, as amended ("the Act"):¹ recordkeeping, reporting, commingling,
23 personal use, and campaign depository violations.
24
25

¹ The facts relative to this matter occurred both prior to and after the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA") Pub L No 10-55, 116 Stat 81 (2002). BCRA did not substantively alter the provisions of the Act relevant to the facts in this matter. All statements of the law that are written in the present tense shall be construed to be in either the present or the past tense, as necessary, depending on whether the statement would be modified by the impact of BCRA or the regulations hereunder.

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III. FACTUAL AND LEGAL ANALYSIS

As Assistant Treasurer of the Victory and Salute Committees, Haywood's duties included collecting and recording political contributions to the Committees, depositing the funds in the appropriate bank accounts, accounting for funds received by the Committees, tracking all disbursements from the Committees, and reporting this information to the Commission. Based upon information available to the Commission, Haywood's work with the Committees began when he was hired to carry out the accounting and reporting responsibilities for one fundraising event being hosted by both Committees. Eventually, his responsibilities expanded to other Committee events and he started receiving contributor checks at his home in Washington, D.C. Based on information available to the Commission, Haywood claims that he alone was responsible for all of the functions of the accounting and reporting operation. However, he and Committee officials never finalized a contract concerning his employment and salary. As there was no mutual understanding regarding his compensation, Haywood resolved the matter by writing himself checks from Committee accounts.

As an initial self-justification, Haywood reasoned that he could take campaign funds to approximate a salary, but over time the amount he received was far in excess of any reasonable salary. Based upon information available to the Commission, Haywood admits the payments to himself were not authorized by anyone else with the Victory and Salute Committees, he never informed anyone of his course of action, he failed to account for any of the disbursements in Committee records, and he did not report them to the Commission in the disclosure reports he generated. Further, based upon information available to the Commission, in an attempt to

1 conceal his actions, Haywood entered false memo notations in the check registers for some of the
2 disbursements indicating they were for "postage."

3 Haywood appears to have performed the duties of the Committees' treasurers by
4 depositing funds received into Committee bank accounts, completing disclosure forms, signing
5 reports and filing them with the Commission. As an acting treasurer, he was required to keep an
6 account of the name, address, date, amount, and purpose of each disbursement made by the
7 Committees and to keep copies of receipt invoices or cancelled checks for disbursements that
8 exceeded \$200. 2 U.S.C. § 432(c)(5). Likewise, he was required to file reports with the
9 Commission that disclosed such information and that reported the total amount of Committee
10 disbursements. 2 U.S.C. §§ 434(b)(4)(H)(v), (6)(B)(v). In addition, he was required to deposit
11 receipts received by the Committees into accounts at their designated campaign depositories.
12 2 U.S.C. § 432(h)(1). Haywood violated the above provisions of the Act when he issued
13 payments to himself and failed to account for those disbursements in Committee records or
14 report them to the Commission.

15 In addition, Haywood deposited campaign contributions into his personal account rather
16 than into designated campaign accounts. The Act's prohibition against commingling committee
17 funds with "the personal funds of any individual," 2 U.S.C. § 432(b)(3), includes commingling
18 with the personal funds of officers of a committee. *See* 11 C.F.R. § 102.15; *see also* MUR 2602
19 (Rhodes) (finding probable cause to believe that the Act was violated and commingling occurred
20 where committee funds were deposited into the candidate's personal account); MUR 3549
21 (Broad) (finding reason to believe committee treasurer knowingly and willfully violated the Act
22 and commingled funds when he transferred \$13,800 in committee funds to himself and falsified

1 information on reports to disguise the fraud); MUR 3585 (Tsongas) (making probable cause to
2 believe and knowing and willful findings against committee's chief fundraiser because he
3 commingled \$181,000 in campaign contributions by depositing them into his own account);
4 MUR 5040 (Izzard) (finding probable cause to believe that respondent/candidate violated the
5 Act, commingled committee funds and failed to deposit them in appropriate accounts when he
6 deposited campaign contributions into his dental practice bank account).

7 Similarly, Haywood converted campaign funds for his own personal use. The Act
8 prohibits an individual from converting contributions or donations for the individual's personal
9 use. 2 U.S.C. § 439a(b)(1). This provision prohibits "any person" from using campaign funds
10 for personal use. *Id.*; 2 U.S.C. § 431(11) (defining "person" under the Act). The Act sets forth
11 examples of *per se* instances of improper personal use, such as using campaign contributions or
12 donations for mortgage or rental payments, clothing expenses, or household food items. *See*
13 2 U.S.C. §§ 439a(b)(2)(A)-(I); *see also* 11 C.F.R. § 113.1(g). In addition, the Act considers a
14 contribution or donation improperly converted for personal use if "the contribution or amount is
15 used to fulfill any commitment, obligation, or expense of a person that would exist irrespective"
16 of the campaign. 2 U.S.C. § 439a(b)(2); *see also* AO 2001-9 (explaining that, "if the obligation
17 would exist even in the absence of the candidacy or even if the officeholder were not in office,
18 then the use of funds for that obligation generally would be personal use").

19 Haywood has admitted that he wrote checks totaling \$155,750 from the Victory
20 Committee's account and \$18,975 from the Salute Committee's account and naming himself as
21 the payee. He also admitted that no one else at the Committees authorized the payments and, in
22 his role as acting treasurer, he did not report the payments to the Commission. He further

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1 admitted that he communicated with other personnel of the Committees via mail, telephone and
2 e-mail and caused them to mail him contributor checks, which he then deposited into his
3 personal account for personal use. Haywood admitted that he used the Committee funds for,
4 among other things, payment of bills. The bills referenced by Haywood could have included
5 items set forth as *per se* violations of section 439a(b)(2), such as home mortgage payments,
6 clothing, and/or household foods items. *See* MUR 5218 (Francis) (finding reason to believe
7 campaign treasurer committed a *per se* violation by using funds in campaign account and petty
8 cash to pay his own rent); *see, e.g.*, MUR 2774 (Crutcher) (finding reason to believe individual
9 violated 2 U.S.C. § 439a by using campaign funds to purchase computer for personal use, but
10 declining to find probable cause after determining computer was used in part for the campaign).
11 At the very least, Haywood used campaign funds from the Committees' accounts to pay personal
12 bills that were "incurred irrespective of" his involvement with the Committees or the campaigns.
13 Therefore, based on the foregoing, there is reason to believe that Earl Allen Haywood
14 knowingly and willingly violated 2 U.S.C. §§ 432(b)(3), 432(c)(5), 432(h)(1), 434(b)(4)(H)(v),
15 434(6)(B)(v), and 439a(b).